

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CHARLES C. KRETEK, as
Personal Representative of
Christopher Aparicio, Deceased,

Plaintiff,

v.

Civ. 11-676 RB/GBW

BOARD OF COMMISSIONERS
OF LUNA COUNTY, et al.

Defendants.

**PLAINTIFF'S OPPOSED MOTION FOR EXTENSION OF TIME TO
FILE RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT ON PLAINTIFF'S SECOND AMENDED COMPLAINT**

Plaintiff hereby moves the Court to grant him an extension of time through January 17, 2013, in which to file a response in opposition to Defendant's Motion for Summary Judgment on Plaintiff's Second Amended Complaint. As grounds therefore Plaintiff states as follows. The deadline for filing dispositive motions initially established by this Court was November 9, 2012. On October 19, 2012, this Court extended that deadline until December 31, 2012, or thirty days after this Court ruled on Plaintiff's Motion for Leave of Court to File a Second Amended Complaint, whichever was later. Dkt. 128. This Court granted Plaintiff leave to file a Second Amended Complaint on October 31, 2012, Dkt. 132, and Plaintiff filed his Second Amended Complaint on the same day. Dkt. 133.

Defendants filed their motion for summary judgment on Friday, December 14, 2012, the same day that the Rule 30(b)(6) depositions of Luna County and the former warden of Luna

County Detention Center, John Krehbiel, were taken in Deming, New Mexico. On December 18 and 19, 2012, Plaintiff's counsel traveled to Las Cruces to attend the deposition of two treating physicians which had been scheduled by the Defendants. On December 20, 2012, undersigned counsel attended an all day mediation in an unrelated case. Between December 21, and December 26, 2012, undersigned counsel was on a previously scheduled Christmas vacation.

The summary judgment motion filed by the Defendants seeks summary judgment on all four of the Plaintiff's civil rights claims brought pursuant to 42 U.S.C. §1983, and Plaintiff's two state law claims brought pursuant to the New Mexico Tort Claims Act. Defendant's motion raises complex issues which are heavily dependent on the facts of this case. The preparation of a response will therefore require a thorough and time consuming examination of more than a dozen fact witness depositions and more than two thousand pages of documents produced in discovery, as well as considerable legal research. On January 7 and 8, 2013, undersigned counsel, who is responsible for the preparation of Plaintiff's response, must attend two doctors appointments with his wife who recently had hip replacement surgery and is unable to drive to these appointments by herself, file a brief in the Tenth Circuit Court of Appeals, and attend two previously scheduled, all day depositions in another case on January 10 and 15, 2013.

For these reasons, Plaintiff respectfully requests this Court to grant him an extension of time through January 17, 2013, in which to file a response in opposition to the Defendants' Motion for Summary Judgment on Plaintiff's Second Amended Complaint. Counsel for Defendants opposes this motion only insofar as the requested extension may affect the case management deadlines established by this Court. See Exhibit 1. Since this Court has previously granted an extension of time in which to file dispositive motions through December 31, 2012, the

requested extension will enable the Defendants' summary judgment motion to be fully briefed within the time frame established by this Court's grant of an extension of the deadline for filing dispositive motions and will therefore not unduly interfere with existing case management deadlines.

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests this Court to enter an Order granting him an extension through January 17, 2013, in which to file a response in opposition to Defendants' Motion for Summary Judgment on Plaintiff's Second Amended Complaint and awarding such other and further relief as the Court deems just and proper.

Respectfully submitted,

SANDERS & WESTBROOK, PC

/Duff Westbrook

Duff Westbrook
102 Granite Ave. NW
Albuquerque, NM 87102
(505) 243-2243
d.sanderswestbrook@qwestoffice.net

and

Nathan Gonzales
Gonzales Law Firm
925 North Hudson Street
Silver City, NM 88061
(575)388-8015
nathan@gonzaleslaw.us

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of December, 2012, I filed the foregoing

electronically through the CM/ECF system which caused all counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/Duff Westbrook

Duff Westbrook